

**From:** [Elizabeth Goldmann](#)  
**To:** [Goldmann, Elizabeth](#)  
**Subject:** Fw: EPA Santa Cruz River Meeting  
**Date:** Wednesday, October 26, 2016 9:29:15 AM  
**Attachments:** [Navigability Mtg\\_12-11-08.docx](#)

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Document Log Item	
Addressing	
From	To
Amy McCoy <AMcCoy@Sonoran.Org>	MClark <MClark@defenders.org> Christina McVie <cmcvie@desertwatch.org> "tsprouse@cals.arizona.edu" <tsprouse@cals.arizona.edu> "aegartne@usgs.gov" <aegartne@usgs.gov> Alejandro Barcenas <arbarcenas@azwater.gov> Jeremy Moss <Jeremy_Moss@nps.gov> "jhays@co.santa-cruz.az.us" <jhays@co.santa-cruz.az.us> "jcallega@usgs.gov" <jcallega@usgs.gov> Mary Dahl <mdahl@co.santa-cruz.az.us> "pgreen@tucsonaudubon.org" <pgreen@tucsonaudubon.org> "Lisa_Carrico@nps.gov" <Lisa_Carrico@nps.gov> Laura Norman <lnorman@usgs.gov> "Carolyn@SonoranDesert.org" <Carolyn@SonoranDesert.org> Marty Jakle <mjakle@cox.net> Ben Lomeli <lomeliben@theriver.com> Ann Audrey <ann.audrey@tucsonaz.gov> Thomas Meixner <tmeixner@hwr.arizona.edu> Matt Skroch <matt@skyislandalliance.org> "card.joan@azdeq.gov" <card.joan@azdeq.gov> Christopher Avery <Christopher.Avery@tucsonaz.gov> Prescott Vandervoet <plv@email.arizona.edu> Kristine Uhlman <kuhlman@ag.arizona.edu> "sandy.bahr@sierraclub.org" <sandy.bahr@sierraclub.org> Julia Fonseca <Julia.Fonseca@rfcd.pima.gov> "Hans J. Huth" <Huth.Hans@azdeq.gov> "Colin M. Breslin" <Breslin.Colin@azdeq.gov> Dustin Garrick <dustingarrick@gmail.com> Sharon Megdal <smegdal@cals.arizona.edu> "jcripps@cals.arizona.edu" <jcripps@cals.arizona.edu> Mark Larkin <marklarkin13b@mac.com>

		Philip Halpenny <phalpenney@cox.net> "lainie.levick@ars.usda.gov" <lainie.levick@ars.usda.gov> "andfar_975@msn.com" <andfar_975@msn.com> Claire Zugmeyer <CZugmeyer@Sonoran.Org> Emily Brott <EBrott@Sonoran.Org> Laura Bose/R9/USEPA/US@EPA Cheryl McIntyre <CMcIntyre@Sonoran.Org> DavidW Smith/R9/USEPA/US@EPA Gayle Hartmann <gayleh@theriver.com>	
<b>CC</b>		<b>BCC</b>	
Melanie Emerson <emerson@skyislandalliance.org> Randy Serraglio <rserraglio@biologicaldiversity.org> Sean Sullivan <Sean@sonorandesert.org> Kathleen Kennedy <kathleen@sonorandesert.org> "Ccook520@aol.com" <Ccook520@aol.com>			
<b>Description</b>			<b>Form Used:</b>
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Re: EPA Santa Cruz River Meeting		12/18/2008 01:06 PM	
<b># of Attachments</b>	<b>Total Bytes</b>	<b>NPM</b>	<b>Contributor</b>
1	34,939		Elizabeth Goldmann
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▼ Body

## Document Body

Hello All -

Attached, please find notes from the Santa Cruz River navigability meeting convened last Thursday. These augment the electronic hand-outs that Matt Clark sent out yesterday and also include a list of the attendees. Thanks to Claire Zugmeyer for recording these notes during the meeting.

Best regards,  
Amy

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Amy McCoy  
Ecologist  
Sonoran Institute  
7650 E. Broadway Blvd. Suite 203  
Tucson, AZ 85710

520-290-0828  
520-290-0969 (fax)  
[amccoy@sonoran.org](mailto:amccoy@sonoran.org)

[www.sonoran.org](http://www.sonoran.org)

On 12/17/08 2:38 PM, "MClark" <[MClark@defenders.org](mailto:MClark@defenders.org)> wrote:

Hello all:

Attached are 3 of the handouts distributed at the meeting convened in Tucson last week by David Smith, (EPA Region 9) regarding the Santa Cruz special case and other jurisdictional issues. The handouts includes: the process/approach they are undertaking, information/data they are looking for and some useful definitions.

Note that any information or data, historical info, photos or other documentation to support additional TNW designations will need to be submitted to the EPA (David Smith) no later than mid-January of 09 in order to feed into their process.

Matt Clark  
Southwest Representative  
Defenders of Wildlife

*(See attached file: Navigability Mtg\_12-11-08.docx)*

**Meeting Notes and Summary**  
**Santa Cruz River Navigability Status Meeting**  
**December 11, 2008**

**Attendees and Contact Information**

Emily Brott – Sonoran Institute – ebrott@sonoran.org  
James Callegary – USGS  
Carolyn Campbell - Coalition for Sonoran Desert Protection – carolyn@sonorandesert.org  
Matt Clark – Defenders of Wildlife – mclark@defenders.org  
Julia Fonseca – Pima County – julia.fonseca@pima.gov  
Anne E. Gartner – USGS  
Paul Green – Tucson Audubon – pgreen@tucsonaudubon.org  
Gayle Hartmann – Save the Scenic Santa Ritas Association – gayleh@theriver.com  
John Hays – Santa Cruz County Flood Control – jhays@co.santa-cruz.az.us  
Kathleen Kennedy – Coalition for Sonoran Desert Protection – kathleen@sonorandesert.org  
Mark Larkin - (b) (6)  
Lainie Levick – USDA-ARS/SWRC – lainie.levick@ars.usda.gov  
Amy McCoy – Sonoran Institute – amccoy@sonoran.org  
Cheryl McIntyre – Sonoran Institute – cmcintyre@sonoran.org  
Sharon Megdal – UA WRRRC – smegdal@cals.arizona.edu  
Jeremy Moss – NPS – jeremy\_moss@nps.gov  
Sherry Sass – Friends of the Santa Cruz River – (b) (6)  
Randy Serraglio – Center for Biological Diversity – rserraglio@biologicaldiversity.org  
Chris Smith – USGS – cfsmith@usgs.gov  
David Smith – EPA – smith.davidw@epa.gov  
Terry Sprouse – NEMO WRRRC – tsprouse@cals.arizona.edu  
Jason Sutter – ADEQ – js9@azdeq.gov  
Kristine Uhlman – WRRRC – kuhlman@ag.arizona.edu  
Prescott Vandervoet – Udall Center – plv@email.arizona.edu  
Claire Zugmeyer – Sonoran Institute – czugmeyer@sonoran.org

**Please send any additional information pertaining to the Santa Cruz River navigability analysis to:**

David Smith  
Chief  
Wetlands Regulatory Office (WTR-8)  
EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415)-972-3464  
smith.davidw@epa.gov

**Meeting Notes and Summary**  
**Santa Cruz River Navigability Status Meeting**  
**December 11, 2008**

**Introduction by David Smith, Chief of the Wetlands Division, Region IX**

Why is EPA involved?

- EPA implements federal law, including the Clean Water Act.
- It is in EPA's interest to protect the Santa Cruz to the best of their ability.

Who makes jurisdictions?

- Army Corps of Engineers usually determines navigability.
- EPA oversees/reviews these determinations and can take responsibility for jurisdictions in certain cases.

What makes US water or gives jurisdictions?

- If there is a high water mark, then it is deemed a 'water' of the US.
- 'Significant nexus to navigable water' or a 'water' upstream will significantly affect a 'water' downstream that is navigable. The terms and definitions of 'navigable' is what we are here to talk about today.

**Santa Cruz River:**

- Using the idea of "significant nexus to navigable", the Colorado is the only major navigable river in AZ
- Two effluent-dominated segments of the Santa Cruz River were determined to be navigable by the Corps in Spring 2008. The decision was quickly withdrawn and the EPA took over the analysis in August 2009. On December 3, 2009, EPA Assistant Administrator Benjamin Grumbles declared those two reaches to be "Traditional Navigable Waters."
- These two reaches are:
  - From Tubac gage to Continental gage
  - From Roger Road Wastewater Treatment Plant to the Pima/Pinal County line

**LA River:**

- The Corps also designated portions of the LA river as navigable
- EPA supports the Corps work and their decisions, and is currently analyzing the LA River status as "Traditional Navigable Waters"

**Navigability:** (not looking at Upper Santa Cruz River headwaters stretch in San Rafael Valley)

Considerations for navigability:

- 1) Flow, channel forms, depth of water, hydrology, bathymetry, cross-sections, 'can you float boats?'
- 2) Access, "can people get to it", how much of the river and adjacent land is privately owned?
- 3) Commerce connections, is there potential that people could use this river for a commercial purpose or recreational boating?

## Meeting Notes and Summary

### Santa Cruz River Navigability Status Meeting

#### December 11, 2008

These 3 things have been noted for the two stretches mentioned above...trying to decide whether other portions will fit.

- 4) History, how have people used this in the past, particularly in terms of boating use?  
Specific questions include put-in location, sites seen, etc.
- 5) What visions do people have for the future uses of the Santa Cruz and how might navigability status play a role?

Under 40 CFR 230.3(s), the definition of “Waters of the United States” includes “all interstate waters” – the Santa Cruz River crosses an international boundary and runs through four sovereign Native American nations. This could be relevant to the jurisdictional analysis of the river.

#### **Questions asked and addressed during round table discussion:**

Why was Tubac reach started there, and not further south?

- This was due to depth of water.

How does EPA treat the effluent vs. natural water?

- EPA treats effluent as the ‘water’ in the river. If effluent is no longer discharged into the river, EPA not sure what they would do.

How does EPA consider geology and how a river may flow subsurface?

- If areas can’t be floated, then not navigable, but trying to consider rules for the southwest where there might be stretches of navigability and then stretches of no flow or sub-surface flow. It is important to note that sub-surface flow can still transport chemicals etc.
- Bottom line – Clean Water Act doesn’t regulate ground water, but EPA recognizes that there is a link between the two.

How does EPA deal with tributaries that don’t flow year round, but do occasionally connect?

- There doesn’t have to be significant flow to establish ‘significant nexus’; however there must be a documented connection. This connection could also have water quality implications.

What is the practical difference in naming segments of the river vs. naming the entire river and how does it impact the tributaries?

- Distance matters, how close you are to a navigable water is really important in determining ‘significant nexus’

Who makes these special cases about tributaries etc?

- The Corps is mainly responsible and they are trying to do a diligent job, particularly local Corps, however no official public review process occurs with Corps decisions.

Is the river considered ‘commercial use’ when recreation or agriculture depends on presence of river?

- Yes and No. When it is not boating based, it is difficult to answer this question. There are regulations for areas without boating based commerce that have rarely been used since the ‘Rappanos’ decision.
- EPA hasn’t done much here...but they want to hear the whole story.

## Meeting Notes and Summary

### Santa Cruz River Navigability Status Meeting

#### December 11, 2008

Dick Kamp wrote an article quoting Obama saying that he will restore the original intent of the Clean Water Act.

- This would be the version prior to the Swank decision using the 'clean water restoration act'.

What is the process for establishing interstate waters? What kind of data would you need to assert jurisdiction in this situation?

- Not really looking for data, but they will be looking at Santa Cruz as a tributary to the Gila river as well as considering the Santa Cruz alone. There will be multiple grounds for establishing jurisdiction on the river.

Does the EPA or Corps regularly use the hydraulic information and flood insurance maps from sister agency of FEMA. Much of this data exists in flood insurance studies.

- Seems like it would be a good source, and the quality of data may vary but would definitely be good to look at.

#### **Additional Points**

Traditional navigable water include 'section 10' waters that have barges etc, and those that have characteristics of TNW.

- Daniel Ball case – explains the decision to list a portion of the Gila River as navigable in the contest of the Daniel Bell case. (can google this name to get information) Also look to the Corps website to find the decision memo and background documents.
- Jurisdiction is not dealing with the width of the river, which is more than EPA can deal with.
- Discussion on appropriations of the water in the river...EPA is not trying to predict the future. If there is a firm plan to remove some of the water in the river, then they will have to consider this.

#### **Data**

EPA would like to receive all documentation by the end of January, would like to get as much information as possible before the middle of January.

- USGS report – may include Santa Cruz, but may be primarily about the San Pedro
- Lessening Stream by Michael Logan
- Ribbon of Green – Robert Webb from USGS has a lot of historical photos
- Water Follies by Robert Glennon
- NPS – plans to make the river more accessible, restoration, increase quality, boating is not being considered.
  - Historian at NPS can give accounts of trade and avenues of commerce along the river.
- Stupid Motorist Laws – citations for driving across flowing washes, and possibly with instances where you try to float the river.

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- ADEQ – concerned that determinations will be tried to applied to all the other clean water programs and that Rappanos may remove their jurisdiction. They are not looking to expand, but don't want to loose their jurisdiction.
- Chris – has stream flow, photos and videos of stream data. USGS has ground based Lidar surveys of the Santa Cruz River and Congress Street.
- NPS SODN – channel cross sections of the river at TUMA.
  
- Life long residents along the Santa Cruz River could give oral histories of what they have seen in their lifetime, Tubac Historical Society may have some of this data. John Hays is trying to find information from when the Presidio flooded...and hasn't been able to find eyewitness or concrete evidence.
- Consider Rincon and Cienega Creek in terms of commerce.
- ADWR collects stream flow data. Keith Nelson may have information from the ModFlow model that he developed for the Santa Cruz Active Management Area.
- Recent gauge data from the past 3-4 months will include flows coming from Pena Blanca Lake.